

CHARLES W. DUNCAN

MAY 20, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. MONTROYA, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 6622]

The Committee on the Judiciary to whom was referred the bill (H. R. 6622) for the relief of Charles W. Duncan, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 5; strike "\$1,610" and insert "\$866.67".

Page 1, lines 7 and 8; strike "and to pay him at the rate of \$44 per week after his discharge from prison so long as he is disabled" and insert "in full settlement of his claims against the United States".

Page 1, line 11; strike the period following "California" and insert:

: *Provided*, That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

PURPOSE

The purpose of the proposed legislation, as modified by the recommendations of the committee, is to pay Charles W. Duncan \$866.67 in full settlement of his claims against the United States based on injuries he sustained on November 15, 1956, while working in the prison baking shop at Alcatraz Prison, Calif.

STATEMENT

On November 15, 1956, Charles W. Duncan was engaged in cleaning a dough mixing machine in the bakery of the United States Penitentiary at Alcatraz. He was in the process of washing out the mixer with a stream of hot water from a hose, and apparently his ability to see was inhibited by the condensing steam rising from the hot water. He had pushed a stop button on the outside of the machine with his left hand, and then placed that hand inside the mixer. Although the motor had been stopped in this manner, the blade inside the machine was still moving when Charles W. Duncan put his left hand inside the machine to scrape the dough from its sides. The blade caught his left hand, and his ring finger was severed at the second joint and the little finger at the first joint. He was immediately taken to the hospital for surgical treatment. The report to the committee from the Department of Justice states that he has made an excellent recovery and has been restored to work in the culinary department of the institution. That report also states that the benefits available to prisoners employed in Federal Prison Industries are not extended to other inmates. Since Charles W. Duncan is not covered by those benefits his only recourse is to appeal to Congress for relief.

The amount stated in the bill as introduced apparently was based on information derived by drawing a parallel to a case under the Federal Employees' Compensation Act, by characterizing the work done by the claimant as equivalent to that done by a person in grade GS-3, and by taking the salary of the middle step in such a position to be \$66 per week, it was determined that the basic compensation at that pay rate is \$44 a week. The Federal Employees' Compensation Act in a case of this kind provides for the payment of compensation for temporary total disability during the period of recovery from the amputation and schedule award under which compensation at the full rate is paid for a specified period of weeks. An injury involving more than one digit of the same hand is proportioned to the loss of the hand. The loss of the digits in Mr. Duncan's case would, under the practices of the Bureau of Employees' Compensation, be rated as slightly less than 15 percent loss of the use of the hand. On this basis, that is for 15 percent loss of use of a hand, compensation after the expiration of the healing period would be paid for a period of 36.6 weeks. Now, multiplying the \$44 basic compensation by the figure 36.6 results in the amount of \$1,610.

However the Department of Justice in its report to the committee on the bill indicated that by applying the formula used to compute compensation paid by Federal Prison Industries under the provisions of title 18 United States Code, section 4126, Mr. Duncan would have been entitled to a sum of \$328.90. In the course of investigating these two results, the committee has determined that since the Justice Department reported to the committee on the bill, the basis for computing compensation paid by Federal Prison Industries has been changed so that by computing compensation in Mr. Duncan's case on the basis of the new figures a new result would be obtained. This would be done by starting with a weekly amount of \$40. This figure is arrived at by fixing an hourly rate of \$1 an hour. The compensation period in Mr. Duncan's case was set at 32.5 weeks. The

formula used was to multiply the weekly compensation by the compensation period, and then to multiply the result by two-thirds to obtain basic compensation. When the figures are substituted in this manner, the result of the \$40 weekly rate times the compensation period of 32.5 weeks is \$1,300. The \$1,300 multiplied by two-thirds amounts to \$866.67. This is the amount recommended by the committee. The committee has determined that it is logical to equate the Duncan case to those cases now covered by Federal Prison Industries compensation. Accordingly this committee recommends that the bill, amended to provide for a payment of \$866.67, be considered favorably.

The report of the Department of Justice which opposes relief as outlined in the bill is as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D. C., June 11, 1957.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (H. R. 6622) for the relief of Charles W. Duncan.

The bill would provide for the payment of the sum of \$1,610 to Charles W. Duncan, an inmate of the United States Prison at Alcatraz, Calif., and the sum of \$44 per week after his discharge from prison, to continue so long as he is disabled, as compensation for injuries sustained by him as the result of an accident on November 15, 1956, while he was working in the prison bakery at the institution.

The beneficiary of this bill was sentenced in Billings, Mont., on November 18, 1954, to a term of imprisonment of 25 years for postal robbery. He was committed to the United States Penitentiary at McNeil Island, Wash., and subsequently to the United States Penitentiary at Alcatraz for maximum custody. The accident occurred on November 15, 1956, while the inmate was engaged in cleaning a dough-mixing machine in the bakery. He turned on the power to revolve the blade and then turned it off, but reached into the machine before the blade stopped revolving. His hand was caught by the blade, his ring finger was severed at the second joint and his little finger at the first joint. He was immediately taken to the hospital for surgical treatment, has made an excellent recovery, and has been restored to work in the culinary department of the institution.

The dough-mixing machine involved in the accident has a safety device which requires the operator to use both hands outside the machine to start the motor when the machine is open. However, the blade revolves for part of a turn after power is discontinued. It was during this brief period that Duncan reached into the machine and suffered injury. The safety device was in normal operation.

Accidents to inmates employed in Federal Prison Industries are compensated under provisions of title 18 United States Code, section 4126, but the benefits of this statute are not extended to other inmates. In applying the formula used by Federal Prison Industries to compensate inmates for similar injuries, Duncan would receive \$328.90. It will be noted that the amount proposed by H. R. 6622 is considerably more than that amount.

The accident occurred as a result of claimant's own negligence and the Department of Justice is unable to recommend enactment of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

UNITED STATES DEPARTMENT OF LABOR,
BUREAU OF EMPLOYEES' COMPENSATION,
Washington, D. C., March 21, 1957.

Hon. CECIL R. KING,
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN KING: I wish to confirm the information furnished orally in response to your request for information concerning the compensation which would be payable under the Federal Employees' Compensation Act in a hypothetical case involving the partial amputation of two fingers.

The case presented concerns an award to an employee classified in the middle salary step of grade GS-3 under the Classification Act who suffered the amputation of the ring finger at the second joint and the little finger at the first joint of the same hand.

The Federal Employees' Compensation Act in a case of this kind provides for the payment of compensation for temporary total disability during the period of recovery from the amputation and a schedule award under which compensation at the full rate is paid for a specified period of weeks. An injury involving more than one digit of the same hand is proportioned to the loss of the hand. The loss of the digits described above would under the Bureau's practices be rated at slightly less than 15 percent loss of use of the hand.

Under the schedule of awards for permanent partial disability, the compensation for the loss of a hand is 244 weeks. For 15 percent loss of use of a hand, compensation after the expiration of the healing period would be paid for a period of 36.6 weeks. The salary of the middle step in a position classified in grade GS-3 is approximately \$66 per week. The basic compensation at this pay rate is \$44 per week.

In the case cited, the compensation award for the permanent disability would be \$1,610 representing compensation for a period of 36.6 at the rate of \$44 per week. As indicated above, in addition to the compensation for the permanent disability the beneficiary would be entitled to compensation at the rate of \$44 per week for the period of temporary total disability. The beneficiary would also be entitled to medical care for the effects of the injury.

With best wishes, I am

Very truly yours,

WM. McCAULEY, *Director.*

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